

## 215.870—215.872

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

(h) *Contract clause.* Use the clause at 252.215-7002, Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of cost or pricing data.

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 62 FR 40472, July 29, 1997]

## 215.870—215.872 [Reserved]

### 215.873 Estimated data prices.

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

- (1) Differences in business practices in competitive situations;
- (2) Differences in accounting systems among offerors;
- (3) Use of factors or rates on some portions of the data;
- (4) Application of common effort to two or more data items; and
- (5) Differences in data preparation methods among offerors.

(c) Data price estimates should not be used for contract pricing purposes without further analysis.

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are de-

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sired, the contract price shall include the costs of duplication, but not of preparation, of such data.

[56 FR 36326, July 31, 1991, as amended at 62 FR 2613, Jan. 17, 1997]

## Subpart 215.9—Profit

### 215.902 Policy.

Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective (profit objective) on any negotiated contract action that requires cost analysis, except on cost-plus-award-fee contracts (but see 215.974). There are three approaches—

- (1) The weighted guidelines method;
- (2) The modified weighted guidelines method; and
- (3) An alternate structured approach.

### 215.903 Contracting officer responsibilities.

(a) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

- (b) The contracting officer—
- (1) Shall use the weighted guidelines method (see 215.971), unless—
    - (A) The modified weighted guidelines method applies; or
    - (B) An alternate approach is justified.
  - (2) Shall use the modified weighted guidelines method (see 215.972) on contract actions with nonprofit organizations;
  - (3) May use an alternate structured approach (see 215.973) when—
    - (i) The contract action is—
      - (A) Under \$500,000;
      - (B) For architect-engineer or construction work;
      - (C) Primarily for delivery of material from subcontractors; or
      - (D) A termination settlement; or
    - (ii) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.
  - (4) Shall use the weighted guidelines method to establish a basic profit rate under a formula type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

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(5) Shall document the profit analysis in the price negotiation memorandum.

(e) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(2) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(f) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

### 215.905 Profit-analysis factors.

#### 215.905-1 Common factors.

The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

### 215.970 DD Form 1547, Record of Weighted Guidelines Method Application.

(a) The DD Form 1547—

(1) Provides a vehicle for performing the analysis necessary to develop a profit objective;

(2) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(3) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(b) The Military Departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see 215.975).

(c) The contracting officer shall—

(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by 215.902. (See 215.971, 215.972, and 215.973 for guid-

ance on using the structured approaches.) Administrative instructions for completing the form are in 253.215-70.

(2) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

### 215.971 Weighted guidelines method.

#### 215.971-1 General.

(a) The weighted guidelines method focuses on three profit factors—

(1) Performance risk;

(2) Contract type risk; and

(3) Facilities capital employed.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation memorandum, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value.

#### 215.971-2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of three parts—

(1) Technical—the technical uncertainties of performance.

(2) Management—the degree of management effort necessary to ensure that contract requirements are met.

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor Risk Factors	Assigned Weighting	Assigned Value	Base (Item 18)	Profit Objective
21 .....	Technical .....	(1)	(2)	N/A	N/A
22 .....	Management .....	(1)	(2)	N/A	N/A
23 .....	Cost Control .....	(1)	(2)	N/A	N/A
24 .....	Performance Risk (Composite) .....	N/A	(3)	(4)	(5)